HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.107 of 2005

Between:

Bonala Krishna Rao … Petitioner.

And

Government of India and another … Respondents.

:: O R D E R ::

Counsel for the petitioner : Sri P. Srinivas
for Sri G. M. Ravi Kumar

Counsel for respondent No.1 : Sri A. Rajashekar Reddy,
Assistant Solicitor General.

7th March, 2007

Whether the petitioner is entitled to pension under the Freedom Fighters Pension Scheme, 1972 (for short, 'the 1972 Scheme') with effect from 15-8-1972 is the only question which arises for determination by the Court in this petition filed by Sri Bonala Krishna Rao.

The petitioner participated in the freedom movement launched by Hyderabad Congress for integration of Hyderabad in the Indian Union. He was imprisoned in Central Prison, Hyderabad from 12-6-1357 F. to 8-1-1358 F. In 1972, the Government of India framed the 1972 Scheme for grant of pension to those who had participated in the freedom struggle. The petitioner submitted an application for grant of pension under that Scheme by claiming that he had taken part in the freedom struggle. It, however, appears that his application was not forwarded by the State Government to the Government of India. Therefore, he filed Writ Petition No.655 of 1993, which was disposed of by the learned Single Judge on 28-1-1993 with a direction to the

Government of Andhra Pradesh to forward the application along with the necessary documents to the Government of India. After some time, the petitioner filed Writ Petition No.4778 of 1993 with the complaint that despite the Court's direction, the respondents have not considered and decided his claim for pension. The second writ petition was disposed of by the learned Single Judge on 20-4-1993 with a direction to the respondents to decide the petitioner's application within two months. The woes of the petitioner did not end there because the respondents did not decide his application. Therefore, he filed third petition, which was registered as Writ Petition No.8325 of 1995. In WPMP.No.10414 of 1995 filed by the petitioner along with that petition, the learned Single Judge passed interim order dated 8-4-1995, which reads as under:

> "It is distressing to note that even after passing two orders by this Court one dt.28-1-1993 in W.P.No.655 of 1993 and another dt.20-4-1993 in W.P.No.4778 of 1993, no action has been taken.
>
> In the circumstances, the petitioner is permitted to file an application directly to respondent No.1 with all requisite documents within 15 days from today and within one month. Thereafter, respondent No.1 shall make scrutiny of the same and if found satisfied that the petitioner is a freedom fighter, shall grant pension from the date he is entitled to under the Rules framed."

In furtherance of the above noted order, the Government of India examined the petitioner's case and accorded sanction for payment of pension to him. This was conveyed to the Pay and Accounts Officer (Pension and Miscellaneous), Ministry of Home Affairs vide Memo dated 20-2-1996 with a copy to the petitioner. The relevant extracts of that memo are reproduced below:

> "I am directed to convey the sanction of the President to the grant of provisional pension @ Rs.300/- (Rupees three hundred only) p.m. from 1-8-1980 to 31-5-1985, @ Rs.500/- (Rupees five hundred only) p.m. from 1.6.1985 to 13-11-1988, @ Rs.750/- (Rupees seven hundred and fifty only) p.m. from

14-11-1988 to 11-8-1992, @ Rs.1000/- (Rupees one thousand only) p.m. from 12-8-1992 to 1-10-1994 and @ Rs.1500/- (Rupees one thousand and five hundred only) p.m. from 2-10-1994 onwards to Shri Bonala Krishna Rao, S/o. late Koochagiri Rao, r/o. H.No.1-2-365/3, Gaganmahal, Domalguda, Hyderabad, Andhra Pradesh.

2. The pension will be for the life time of the recipient and would be in addition to pension if any, sanctioned by the State Government. This sanction will be subject to review on receipt of verification report from the State Government by the President. In particular, it is liable to cancellation/modification without any notice if it is found that it was sanctioned on mistaken ground/false information. The Government have also the full right to the recovery of the wrongly drawn pension in case the pension is cancelled.

3. In the event of the freedom fighter predeceasing, his spouse will be entitled to a family pension of Rs.1500/- (Rupees one thousand and five hundred only) p.m. which may be paid to her from the date following the death of the pensioner during her life time or till remarriage.

4. The expenditure involved will be debitable to the Major Head "2235"-C-Social Security and Welfare-C.2-Other Social Security and Welfare Programmes C.2(1) – Swatantrata Sainik Samman Pension Scheme Grant No.44, Ministry of Home Affairs for the financial year 1995-96.

5. The following documents will be submitted by the applicant directly to the P.A.O. in triplicate:-

(i) Joint photograph attested on front side; (ii) Specimen signatures; (iii) Impression of thumb and four fingers of left hand; (iv) Descriptive Roll i.e. identification marks; (v) Affidavit on non-judicial stamp paper about his status as a freedom fighter indicating date of birth and educational qualification etc; and (vi) Name of Nationalised Public Sector Bank and Bank Account No. (with full signature and date).

6. It is requested that immediate arrangements may kindly be made for the payment of pension and pension payment order be issued to him."

By taking cognizance of the aforementioned development, the learned Single Judge closed the proceedings of Writ Petition No.8325 of 1995.

The petitioner's grievance is that while according sanction for payment of pension to him, respondent No.1 omitted to consider the fact that he had applied for grant of pension under the 1972 Scheme and not under Swatantrata Sainik Samman Pension Scheme, 1980 (for short, 'the 1980 Scheme') and that in terms of the 1972 Scheme, he is entitled to pension with effect from 15-8-1972.

In the counter affidavit filed on behalf of the Union of India, Sri S. D. Kaushik, Under Secretary in the Ministry of Home Affairs, Government of India, has enumerated the conditions which are required to be satisfied for grant of pension under the 1980 Scheme. He has then referred to the facts relating to the constitution of Hyderabad Special Screening Committees headed by S/Sri Govind Bhai Shroff, N. Giri Prasad and Ch. Rajeswara Rao and highlighted the deficiencies in the recommendations made by the committee headed by Sri Ch. Rajeswara Rao, as also the complaints received from several quarters and averred that the Government of India will take appropriate decision after completion of the enquiry. Sri Kaushik has also raised the objection of delay by asserting that the petitioner has approached the Court after a gap of nine years counted from the date of sanction of pension. Lastly, he has pleaded that in the absence of earlier file of the petitioner, it is not possible to confirm/check whether he was eligible under the 1972 Scheme.

The petitioner has filed rejoinder affidavit to controvert some of the averments contained in the affidavit of Sri S.D. Kaushik. In paragraph 4 of the rejoinder affidavit, the petitioner has explained the delay in the following words:

> "4. That, the allegation in para No.39, that pension was granted in the year 1996; that, the petitioner is approaching the Court after a gap of more than 9 years, is totally misconceived, incorrect and untenable. It is submitted that, in the year 1972 the Central Government introduced a Scheme for grant of pension to the freedom fighters and their familities from the Central revenue. Subsequently, the said Scheme was rendered as Swatantrata Sainik Samman Pension, 1980 w.e.f.

1-8-1980. It is submitted that an application dated 24-5-1972 to the second respondent to forward the same to the first respondent for sanctioning of pension for freedom fighters, as initiated by the Ministry of Home Affairs, Government of India w.e.f. 15-8-1972; that, there was no delay or laches on my part and whatever delay or laches, the same is only on the part of the respondents herein. Nobody will take advantage of their own wrong. It is submitted that waiting for a long period and vexed with the attitude of the respondents in not attending to the periodical representations, I filed W.P. No.655/93 for a direction to respondent No.1 to consider my application dt.24-5-1972; and to verify the Jail Certificate dt.19-5-1972 issued to me by the then Superintendent, Central Prison, Chanchalguda, Hyderabad. The said writ petition was disposed of on 28-1-1993 directing the second respondent herein to forward my application within a period of two months from the date of order. In spite of the above order, when respondent did not take any steps, I filed W.P.No.4778/93 and the same was disposed of on 20-4-1993 with a direction to consider my application within two months. Even after the direction issued by the Hon'ble Court for second time, as there was no response, I again filed W.P.No.8325/95 and obtained interim order from this Hon'ble Court on 8-4-1995, as per which, I was directed to file an application directly to respondent No.1 along with all requisite documents. On the basis of my application, the second respondent conducted an enquiry and submitted the same to the first respondent stating that I participated in the freedom struggle and was arrested and kept in prison. The first respondent without any reason or logic granted provisional pension, w.e.f. 21-8-1980 instead of granting it from 15-8-1972. Basing on the said sanction, the respondents herein got my W.P. No.8325/95 disposed of by order dt.1-3-2004. In fact, as stated above, the pension has to be payable from 15-8-1972, but not from 21-8-1980. My case is governed by the earlier Scheme, but not under the revised Scheme introduced in 1980. From the year 1996 to till today I suffered with several serious ailments, with heart, kidney and renal cancer problems and several other ailments. I underwent several major operations. However, in December, 2004 itself I filed the present W.P. questioning the action of the first respondent in paying the pension from 1-8-1980 only but not from 15-8-1972. There is no delay or laches on my part as my aforesaid

W.P.No.8325/95 was disposed of only on 1-3-2004. There was no question of limitation in the present case even though provisional pension was granted in the year 1996. I am under the impression that the same can be decided in W.P.No.8325/95. But the said W.P. was closed on the representation of the respondents that I was sanctioned pension. The said W.P. was not disposed of on merits, but was simply closed on the ground that I was already sanctioned pension. The judgment referred in para 41 of the affidavit is not referred to my case."

Sri P. Srinivas, learned counsel for the petitioner relied on the judgments of the Supreme Court in **Mukund Lal Bhandari v. Union of India**[1] and **Gurdial Singh v. Union of India**[2] and argued that the petitioner is entitled to pension under the 1972 Scheme with effect from 15-8-1972.

Sri A. Rajashekar Reddy, learned Assistant Solicitor General conceded that the Government of India has sanctioned pension to the petitioner by treating him a freedom fighter, but argued that relief in terms of the prayer made in the writ petition should not be granted because the petitioner has sought intervention of the Court after a time gap of nine years and there is no tangible explanation for this long delay. He then relied on the judgment of the Supreme Court in **Union of India v. Avtar Singh**[3] and argued that the Court may not entertain the petitioner's claim for payment of pension with effect from 15-8-1972 because the record of the application made by him in 1972 is not available.

I have given serious thought to the respective arguments and scanned the record. In my opinion, the writ petition deserves to be allowed because the respondents have failed to put-forward any tangible ground for denying relief to the petitioner. They have not disputed the eligibility and entitlement of the petitioner to receive pension under the 1972 Scheme. As a matter of fact, the only objection raised by the respondents is that the petitioner has

approached the Court after a long time gap of nine years. In my view, the delay cannot be treated fatal to the petitioner's right to get pension under the 1972 Scheme because the respondents have not controverted the assertions contained in paragraph 4 of the petitioner's affidavit that he had been suffering from serious ailments of heart, kidney and renal cancer and underwent major operations. Moreover, the third petition filed by the petitioner, which was registered as Writ Petition No.8325 of 1995, was disposed of by the learned Single Judge on 1-3-2004 and within nine months, the present petition was filed. Therefore, he cannot be non-suited on the ground of delay and laches.

In **Mukund Lal Bhandari v. Union of India** (supra), the Supreme Court considered the issue of delay and held:

> "9. That leaves us with the question as to whether, notwithstanding the date on which the application itself is made, the claimant should be entitled to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with retrospective effect, reliance is placed on the two cases cited earlier where the benefit is given with effect from August 1, 1980. We have given our anxious consideration to the question and are of the view that for reasons more than one, the benefit should flow only from the date of the application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospectivity of the benefit was neither raised nor answered. We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such strait-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such

freedom fighters were given its benefit, whose annual income did not exceed Rs.5000. It is only later, i.e., from August 1, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of

compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now."

In **Gurdial Singh v. Union of India** (supra), the Supreme Court highlighted the philosophy underlying the 1972 Scheme and observed:

"The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. Moreover, in the partition of the

country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Therefore, in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It is also to be kept in mind that the claimants under the Scheme are supposed to be such persons who had given the best part of their life for the country."

In **Union of India v. Avtar Singh** (supra), the Supreme Court reiterated the ratio of **Mukund Lal Bhandari v. Union of India** and **Gurdial Singh v. Union of India** (supra), but observed that the benefit of the Scheme cannot be extended to those who did not play any role in the freedom struggle.

In my opinion, the petitioner's case is squarely covered by the ratio of **Mukund Lal Bhandari v. Union of India** and **Gurdial Singh v. Union of India** (supra) and, therefore, a direction deserves to be given to respondent No.1 to pay him pension under the 1972 Scheme with effect from 15-8-1972.

In the result, the writ petition is allowed. The respondents are directed to grant pension to the petitioner under the 1972 Scheme with effect from 15-8-1972. The arrears be paid to him within a period of three months from the date of receipt of copy of this order.

G.S.SINGHVI, C.J.

7th March, 2007.

Note: The Court Officer is directed to give attested copies of this order to the learned counsel for the parties.
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[1] 1993 Supp. (3) SCC 2

[2] (2001) 8 SCC 8

[3] (2006) 6 SCC 493